



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2016-0785: FRL-9959-02-Region 10]

Air Plan Approval; Washington: General Regulations for Air Pollution Sources, Energy Facility Site Evaluation Council

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to revise the Washington State Implementation Plan (SIP) to approve updates to the Energy Facility Site Evaluation Council (EFSEC) air quality regulations. The EFSEC regulations primarily adopt by reference the Washington Department of Ecology (Ecology) general air quality regulations, which the EPA approved in the fall of 2014 and spring of 2015. Consistent with our approval of the Ecology general air quality regulations, we are also proposing to approve revisions to implement the preconstruction permitting regulations for large industrial (major source) facilities in attainment and unclassifiable areas, called the Prevention of Significant Deterioration (PSD) program. The PSD program for major energy facilities under EFSEC's jurisdiction has historically been operated under a Federal Implementation Plan (FIP), in cooperation with the EPA and Ecology. If finalized, the EPA's proposed approval of the EFSEC PSD program would narrow the FIP to include only those few potential facilities, emission sources, geographic areas, and permits for which EFSEC does not have jurisdiction or authority. The EPA is also proposing to approve EFSEC's visibility protection permitting program which overlaps significantly with the PSD program in most cases.

DATES: Written comments must be received on or before **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2016-0785 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

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I. Background for Proposed Action

By statute, EFSEC has jurisdiction for managing the air program with respect to major energy facilities in the State of Washington. See Chapter 80.50 of the Revised Code of Washington (RCW). The EFSEC air quality regulations are contained in Chapter 463-78 Washington Administrative Code (WAC) *General and Operating Permit Regulations for Air Pollution Sources*. These EFSEC regulations rely primarily on the incorporation by reference of the corresponding Ecology general air quality regulations contained in Chapter 173-400 WAC *General Regulations for Air Pollution Sources*. On July 27, 2015, effective August 27, 2015, EFSEC updated its regulations to generally adopt by reference the version of Chapter 173-400 WAC approved into the SIP at that time.¹ On December 20, 2016, EFSEC, in cooperation with Ecology, requested that the EPA approve the updated EFSEC regulations consistent with our phased approval of Chapter 173-400 WAC. See 79 FR 59653 (October 3, 2014, approval of general provisions), 79 FR 66291 (November 7, 2014, approval of major source nonattainment new source review), and 80 FR 23721 (April 29, 2015, approval of PSD and visibility protection permitting programs).

II. Washington SIP Revisions

A. Revised EFSEC Regulations

¹ On October 6, 2016, the EPA approved minor revisions to Chapter 173-400 WAC, primarily updating the adoption by reference date of cited Federal regulations (81 FR 69385). Because EFSEC already modified its regulations to

The EPA last approved EFSEC's air quality regulations on May 23, 1996 (61 FR 25791). Aside from recodification from 463-39 to 463-78 WAC, grammatical changes, and minor clarifications, the EFSEC air quality regulations remain substantially unchanged since the EPA's last approval. The more substantive changes include EFSEC's modification of WAC 463-78-095 *Permit Issuance* to clarify that new permits, and modifications to existing permits, shall be conditioned upon compliance with all provisions of the federally-approved SIP. Other changes include updating citations in Chapter 463-78 WAC to better align with the associated provisions in Chapter 173-400 WAC. A full redline/strikeout comparison of the 1996 SIP-approved version of the EFSEC regulations to the submitted 2015 version is included in the docket for this action. We reviewed the revisions to the regulations and are proposing to determine that they meet the requirements of section 110 of the Clean Air Act (CAA).

The most substantive component of EFSEC's regulations is WAC 463-78-005 *Adoption by Reference*, which generally adopts by reference Chapter 173-400 WAC to match the EPA's October 3, 2014, November 7, 2014, and April 29, 2015 phased approval of Ecology's general air quality rules. We note that EFSEC's adoption by reference of Chapter 173-400 WAC is modified in three ways. First, references in Chapter 173-400 WAC regarding appeals are modified to reflect EFSEC's independent appeals process in WAC 463-78-140. Second, the cross references to fees under Chapter 173-455 WAC are modified to reflect EFSEC's independent fee structure set out in Chapter 80.50 RCW. Lastly, WAC 173-400-720 contains Ecology's adoption by reference of the federal PSD program regulations contained in 40 CFR 52.21, with some exceptions. EFSEC modified the adoption by reference of WAC 173-400-720 to reflect the most recent version of 40 CFR 52.21 available at that time (May 1, 2015).

include an updated adoption by reference date for cited Federal regulations, this minor change to Chapter 173-400 WAC does not substantively affect EFSEC's submission.

We note two additional factors regarding EFSEC's incorporation by reference of Chapter 173-400 WAC. First, while EFSEC generally adopts most of the provisions of Chapter 173-400 WAC by reference, not all provisions are included. For example, consistent with the EPA's prior approval of the EFSEC regulations, EFSEC did not adopt by reference the enforcement and authority provisions contained in WAC 173-400-220 through 260. For these provisions, EFSEC relies on its own independent authorities, which are currently part of Washington's federally-approved SIP under WAC 463-39-135 through 230. In other cases, such as WAC 173-400-118 *Designation of Class I, II, and III Areas*, WAC 173-400-151 *Retrofit Requirements for Visibility Protection*, and parts of WAC 173-400-070 *Emission Standards for Certain Source Categories*, EFSEC did not adopt these Chapter 173-400 WAC provisions by reference because they pertain to source categories or authorities outside the scope of EFSEC's jurisdiction. The second factor is that many parts of Chapter 173-400 WAC contain provisions that are not related to the criteria pollutants regulated under title I of the CAA, not related to the requirements for SIPs under section 110 of the CAA, or have not been revised since last approved by the EPA. For this reason, EFSEC only submitted for SIP approval those parts of the incorporation by reference of Chapter 173-400 WAC consistent with the EPA's October 3, 2014, November 7, 2014, and April 29, 2015 phased approval. A full listing of the Chapter 173-400 WAC provisions submitted for approval is included in Section IV.

B. Personnel, Funding, and Authority

Section 110(a)(2)(E)(i) of the CAA requires that agencies have adequate personnel, funding, and authority under state law to carry out the SIP. EFSEC's authority under state law to carry out the air program for major energy facilities, including the PSD and visibility protection permitting programs, is derived from Chapter 80.50 RCW. With respect to personnel

and funding, EFSEC has issued CAA PSD permits, in coordination with Ecology, under a partial delegation agreement with the EPA since 1993. These PSD permits include the visibility protection requirements of WAC 173-400-117 *Special Protection Requirements for Federal Class I Areas*, adopted by reference in EFSEC's regulations. As described in our April 29, 2015 final approval of WAC 173-400-117, these visibility protection requirements would also apply to visibility-related elements associated with permits issued under the major nonattainment new source review program under WAC 173-400-800 through 860, also adopted by reference in the EFSEC regulations (see 80 FR 23721, at page 23726). The staff of engineers and air quality modelers at both EFSEC and Ecology, who supported issuance of permits under the delegation agreement with the EPA, will continue to support EFSEC's issuance of permits under a SIP-approved PSD and visibility protection program. Chapter 80.50 RCW also provides EFSEC the authority to charge fees for the coordinated EFSEC and Ecology review of any new or modified permits. The EPA therefore proposes to find that EFSEC has adequate personnel, funding, and authority to implement the PSD and visibility protection programs for facilities in its jurisdiction.

III. Effect of Court Decisions Vacating and Remanding Certain Federal Rules

A. *Sierra Club v. EPA*

The EPA's January 7, 2015 proposed approval of Ecology's PSD program included a discussion of the *Sierra Club v. EPA*, 703 F.3d 458 (D.C. Cir. 2013) decision which vacated certain provisions of the Federal PSD regulations related to fine particulate matter (PM_{2.5}). See 80 FR 838, at page 842. As discussed in the proposed approval, Ecology's regulations at that time in WAC 173-400-720(4)(a)(vi) generally incorporated by reference the Federal PSD permitting provisions in effect as of August 13, 2012, including the vacated provisions of 40 CFR 52.21(i) (relating to the significant monitoring concentration) and 40 CFR 52.21(k)

(relating to the significant impact level). The EPA subsequently removed the vacated PM_{2.5} SIL and SMC provisions from the Federal PSD regulations effective December 9, 2013 (78 FR 73698). Ecology resolved this issue by revising WAC 173-400-720(4)(a)(vi) to an updated version of 40 CFR 52.21 that did not contain the vacated provisions (81 FR 69385, October 6, 2016). Similarly, we are proposing to determine that EFSEC has resolved this issue by modifying its incorporation by reference of WAC 173-400-720(4)(a)(vi) to reflect the May 1, 2015 version of 40 CFR 52.21 that does not contain the vacated PM_{2.5} SIL and SMC provisions.

B. Utility Air Regulatory Group v. EPA

On June 23, 2014, the U.S. Supreme Court issued a decision in *Utility Air Regulatory Group (UARG) v. EPA*, 134 S. Ct. 2427, addressing the application of stationary source permitting requirements to greenhouse gases (GHGs). The U.S. Supreme Court held that the EPA may not treat GHGs as an air pollutant for the specific purpose of determining whether a source is a major source (or a modification thereof) and thus required to obtain a PSD or title V permit. In response to the Supreme Court's decision, and the subsequent vacatur of 40 CFR 51.166(b)(48)(v) and 40 CFR 52.21(b)(49)(v) by the Court of Appeals for the District of Columbia Circuit, the EPA removed these requirements from the federal PSD regulations (80 FR 50199, August 19, 2015). Because the EPA's removal of the vacated provisions occurred after EFSEC's May 1, 2015 citation date incorporating 40 CFR 52.21, the EFSEC regulations adopted by reference in WAC 463-78-005 have not yet captured the EPA's update. In order to align with the Supreme Court decision and to prevent delay in the EPA's consideration of the EFSEC regulations, EFSEC clarified in the December 20, 2016 SIP submittal that it is not submitting the incorporation by reference of 40 CFR 52.21(b)(49)(v) for approval. EFSEC intends to incorporate by reference a more recent version of 40 CFR 52.21 that does not contain the vacated

provisions, as soon as practicable.

EFSEC's SIP submittal does not discuss the fact that, because it adopted the EPA's PSD regulations as of May 1, 2015, its rules include the elements of the EPA's 2012 rule implementing Step 3 of the phase-in of PSD permitting requirements for GHGs described in the Tailoring Rule, which became effective on August 13, 2012 (77 FR 41051, July 12, 2012). The incorporation of the Step 3 rule provisions allows GHG-emitting sources to obtain plantwide applicability limits (PALs) for their GHG emissions on a carbon dioxide equivalent (CO₂e) basis. The Federal GHG PAL provisions, as currently written, include some provisions that may no longer be appropriate in light of the Supreme Court decision. Because the Supreme Court has determined that sources and modifications may not be defined as "major" solely on the basis of the level of greenhouse gases emitted or increased, PALs for greenhouse gases may no longer have value in some situations where a source might have triggered PSD based on GHG emissions alone. However, PALs for GHGs may still have a role in determining whether a modification that triggers PSD for a pollutant other than GHGs should also be subject to Best Available Control Technology (BACT) for GHGs. These provisions will likely be revised pending further legal action. However, these provisions do not add new requirements for sources or modifications that only emit or increase GHGs above the major source threshold or the 75,000 tons per year (tpy) GHG threshold in 40 CFR 52.21(b)(49)(iv). Rather, the PALs provisions provide increased flexibility to sources that choose to address their GHG emissions in a PAL. Because this flexibility may still be valuable to sources in at least one context described above, we believe that it is appropriate to approve these provisions into the Washington SIP at this point in time. The EPA is therefore proposing to determine that EFSEC's SIP revision meets the necessary PSD requirements at this time, consistent with the Supreme Court's decision.

IV. The EPA's Proposed Action

A. Regulations to Approve and Incorporate by Reference into the SIP

The EPA proposes to approve and incorporate by reference into the Washington SIP at 40 CFR 52.2470(c) – *Table 3 – Additional Regulations Approved for the Energy Facilities Site Evaluation Council (EFSEC) Jurisdiction*, the revised EFSEC regulations listed in Table 1 below.

Table 1: Energy Facilities Site Evaluation Council (EFSEC) Regulations for Proposed Approval and Incorporation by Reference

| State/Local Citation | Title/Subject | State/Local Effective Date | Explanation |
|------------------------------------------------------------------------------------------------|-------------------------------|----------------------------|-----------------------------------------------------------------------------------------------------------------------|
| Chapter 463-78 WAC, General and Operating Permit Regulations for Air Pollution Sources. | | | |
| 78-005 | Adoption by Reference | 8/27/15 | Except: (2), (3), (4), and (5). See table below for revised Chapter 173-400 WAC provisions incorporated by reference. |
| 78-010 | Purpose | 8/27/15 | |
| 78-020 | Applicability | 11/11/04 | |
| 78-030 | Additional Definitions | 8/27/15 | Except references to 173-401-200 and 173-406-101. |
| 78-095 | Permit Issuance | 8/27/15 | |
| 78-120 | Monitoring and Special Report | 11/11/04 | |

Table 2: Revised Chapter 173-400 WAC Regulations Incorporated by Reference in WAC 463-78-005²

| State citation | Title/subject | State effective date | Explanations |
|----------------------------------------------------------------------------------------------------------|--------------------------------|----------------------|--------------------------|
| Washington Administrative Code, Chapter 173-400 -- General Regulations for Air Pollution Sources. | | | |
| 173-400-030 | Definitions | 12/29/12 | Except: 173-400-030(91). |
| 173-400-036 | Relocation of Portable Sources | 12/29/12 | |

² Several of the provision of Chapter 173-400 WAC incorporated by reference remain unchanged since the EPA's last approval of EFSEC's regulations and were not resubmitted as part of the December 20, 2016 SIP revision.

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| 173-400-040 | General Standards for Maximum Emissions | 4/1/11 | Except: 173-400-040(2)(c); 173-400-040(2)(d); 173-400-040(3); 173-400-040(5); 173-400-040(7), second paragraph. |
| 173-400-050 | Emission Standards for Combustion and Incineration Units | 12/29/12 | Except: 173-400-050(2); 173-400-050(4); 173-400-050(5). |
| 173-400-060 | Emission Standards for General Process Units | 2/10/05 | |
| 173-400-070 | Emission Standards for Certain Source Categories | 12/29/12 | Except: 173-400-070(1); 173-400-070(2); 173-400-070(3); 173-400-070(4); 173-400-070(6); 173-400-070(7); 173-400-070(8). |
| 173-400-081 | Startup and Shutdown | 4/1/11 | |
| 173-400-091 | Voluntary Limits on Emissions | 4/1/11 | |
| 173-400-105 | Records, Monitoring, and Reporting | 12/29/12 | |
| 173-400-110 | New Source Review (NSR) for Sources and Portable Sources | 12/29/12 | Except: 173-400-110(1)(c)(ii)(C); 173-400-110(1)(e); 173-400-110(2)(d); The part of WAC 173-400-110(4)(b)(vi) that says, <ul style="list-style-type: none"> “not for use with materials containing toxic air pollutants, as listed in chapter 173-460 WAC,”; The part of 400-110 (4)(e)(iii) that says, <ul style="list-style-type: none"> “where toxic air pollutants as defined in chapter 173-460 WAC are not emitted”; The part of 400-110(4)(f)(i) that says, <ul style="list-style-type: none"> “that are not toxic air pollutants |

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|-------------|-----------------------------------------------------------------------------------------------------|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | | <p>listed in chapter 173-460 WAC”;</p> <p>The part of 400-110 (4)(h)(xviii) that says,</p> <ul style="list-style-type: none"> • “, to the extent that toxic air pollutant gases as defined in chapter 173-460 WAC are not emitted”; <p>The part of 400-110 (4)(h)(xxxiii) that says,</p> <ul style="list-style-type: none"> • “where no toxic air pollutants as listed under chapter 173-460 WAC are emitted”; <p>The part of 400-110(4)(h)(xxxiv) that says,</p> <ul style="list-style-type: none"> • “, or \leq 1% (by weight) toxic air pollutants as listed in chapter 173-460 WAC”; <p>The part of 400-110(4)(h)(xxxv) that says,</p> <ul style="list-style-type: none"> • “or \leq 1% (by weight) toxic air pollutants”; <p>The part of 400-110(4)(h)(xxxvi) that says,</p> <ul style="list-style-type: none"> • “or \leq 1% (by weight) toxic air pollutants as listed in chapter 173-460 WAC”; <p>400-110(4)(h)(xl) , second sentence;</p> <p>The last row of the table in 173-400-110(5)(b) regarding exemption levels for Toxic Air Pollutants.</p> |
| 173-400-111 | Processing Notice of Construction Applications for Sources, Stationary Sources and Portable Sources | 12/29/12 | <p>Except:</p> <p>173-400-111(3)(h);</p> <p>173-400-111 (5)(a) (last six words);</p> <p>173-400-111 (6);</p> <p>The part of 173-400-111(8)(a)(v) that says,</p> <ul style="list-style-type: none"> • “and 173-460-040,”; <p>173-400-111(9).</p> |
| 173-400-112 | Requirements for New Sources in Nonattainment Areas -- Review for Compliance with Regulations | 12/29/12 | |
| 173-400-113 | New Sources in Attainment or | 12/29/12 | <p>Except:</p> <p>173-400-113(3), second sentence.</p> |

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|-------------|----------------------------------------------------------------|----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | Unclassifiable Areas -- Review for Compliance with Regulations | | |
| 173-400-116 | Increment Protection | 9/10/11 | |
| 173-400-117 | Special Protection Requirements for Federal Class I Areas | 12/29/12 | |
| 173-400-131 | Issuance of Emission Reduction Credits | 4/1/11 | |
| 173-400-136 | Use of Emission Reduction Credits (ERC) | 4/1/11 | |
| 173-400-171 | Public Notice and Opportunity for Public Comment | 12/29/12 | <p>Except: The part of 173-400-171(3)(b) that says,</p> <ul style="list-style-type: none"> • “or any increase in emissions of a toxic air pollutant above the acceptable source impact level for that toxic air pollutant as regulated under chapter 173-460 WAC”; <p>173-400-171(12).</p> |
| 173-400-175 | Public Information | 2/10/05 | |
| 173-400-200 | Creditable Stack Height and Dispersion Techniques | 2/10/05 | |
| 173-400-700 | Review of Major Stationary Sources of Air Pollution | 4/1/11 | |
| 173-400-710 | Definitions | 12/29/12 | |
| 173-400-720 | Prevention of Significant Deterioration (PSD) | 12/29/12 | <p>Except: 173-400-720(4)(a)(i through iv); 173-400-720(4)(b)(iii)(C); and 173-400-720(4)(a)(vi) with respect to the incorporation by reference of the text in 40 CFR 52.21(b)(49)(v). * For the purpose of EFSEC’s incorporation by reference of 40 CFR 52.21, the date in WAC 173-400-720 (4)(a)(vi) is May 1, 2015.</p> |

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|-------------|----------------------------------------------------------------------------------------------------------------|----------|--------------------------------------------|
| 173-400-730 | Prevention of Significant Deterioration Application Processing Procedures | 12/29/12 | Except 173-400-730(4) |
| 173-400-740 | PSD Permitting Public Involvement Requirements | 12/29/12 | |
| 173-400-750 | Revisions to PSD Permits | 12/29/12 | Except: 173-400-750(2) second sentence. |
| 173-400-800 | Major Stationary Source and Major Modification in a Nonattainment Area | 4/1/11 | |
| 173-400-810 | Major Stationary Source and Major Modification Definitions | 12/29/12 | |
| 173-400-820 | Determining if a New Stationary Source or Modification to a Stationary Source is Subject to these Requirements | 12/29/12 | |
| 173-400-830 | Permitting Requirements | 12/29/12 | |
| 173-400-840 | Emission Offset Requirements | 12/29/12 | |
| 173-400-850 | Actual Emissions Plantwide Applicability Limitation (PAL) | 12/29/12 | |
| 173-400-860 | Public Involvement Procedures | 4/1/11 | |

B. Regulations to Approve but Not Incorporate by Reference

In addition to the regulations proposed for approval and incorporation by reference above, the EPA reviews and approves state submissions to ensure they provide adequate enforcement authority and other general authority to implement and enforce the SIP. However,

regulations describing state enforcement and other general authorities are generally not incorporated by reference, so as to avoid potential conflict with the EPA's independent authorities. The EPA has reviewed and is proposing to approve WAC 463-78-135 *Criminal Penalties*, WAC 463-78-140 *Appeals Procedure* (except subsections 3 and 4 which deal with permits outside the scope of CAA section 110), WAC 463-78-170 *Conflict of Interest*, and WAC 463-78-230 *Regulatory Actions*, as providing EFSEC with adequate enforcement and other general authority for purposes of implementing and enforcing its SIP, but is not incorporating these sections by reference into the SIP codified in 40 CFR 52.2470(c). Instead, the EPA is proposing to include these sections in 40 CFR 52.2470(e), *EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures*, as approved but not incorporated by reference regulatory provisions.

C. Regulations to Remove from the SIP

As discussed in our July 10, 2014 proposed approval of revisions to Chapter 173-400 WAC, Ecology formerly relied on the registration program under WAC 173-400-100 for determining the applicability of the new source review (NSR) permitting program (see 79 FR 39351 at page 39354). By statutory directive, this means of determining NSR applicability was replaced by revisions to WAC 173-400-110 which set de minimis emission unit, activity, and annual emission thresholds. In our October 3, 2014 final action, we approved WAC 173-400-110 as the means of determining NSR applicability, and at Ecology's request, removed WAC 173-400-100 from the SIP (79 FR 59653). Consistent with our proposed and final approval of revisions to Chapter 173-400 WAC, we are now proposing to remove, at EFSEC's request, WAC 463-39-100 *Registration* (recodified to WAC 463-78-100) from the SIP because it is no longer used as the means of determining NSR applicability.

As previously discussed, EFSEC adopted by reference most of the provisions in Chapter 173-400 WAC, but excluded certain provisions pertaining to authorities or source categories outside EFSEC's jurisdiction. WAC 173-400-151 *Retrofit Requirements for Visibility Protection* is one such provision. The EPA's May 23, 1996 approval of EFSEC's regulations included the incorporation by reference of WAC 173-400-151 (61 FR 25791). These regulations establish Best Available Retrofit Technology (BART) as part of the visibility protection program for an "existing stationary facility." Under WAC 173-400-151 an "existing stationary facility" is defined, among other factors, as a facility not in operation prior to August 7, 1962, and also in existence on August 7, 1977. EFSEC has advised the EPA that there are no sources under EFSEC's jurisdiction that meet the definition of BART-eligible sources. The EPA is therefore proposing to grant EFSEC's request to remove the incorporation by reference of WAC 173-400-151 from the SIP.

D. Proposed Transfer of Existing EPA-issued PSD Permits

As part of the SIP submittal, EFSEC requested approval to exercise its authority to fully administer the PSD program with respect to those sources under EFSEC's permitting jurisdiction that have existing PSD permits issued by the EPA. This includes authority to conduct general administration of these existing permits, authority to process and issue any and all subsequent PSD permit actions relating to such permits (e.g., modifications, amendments, or revisions of any nature), and authority to enforce such permits. Since 1993, EFSEC has had partial delegation of the PSD permitting program under the FIP. Therefore, many of the EPA permits subject to proposed transfer were also issued under state authority. For those permits issued solely by the EPA prior to delegation, EFSEC, in coordination with Ecology, has demonstrated adequate authority to enforce and modify these permits. Concurrent with our approval of EFSEC's PSD

program into the Washington SIP, we are proposing to transfer the EPA-issued permits to EFSEC for the Chehalis Generation Facility and Grays Harbor Energy Center facilities.

E. Scope of Proposed Action

The EPA is excluding from the scope of this proposed approval certain limitations as they relate to PSD requirements for carbon dioxide emissions from industrial combustion of biomass. As discussed in our April 29, 2015 approval of Ecology's PSD program, a Washington State statutory provision contained in RCW 70.235.020 *Greenhouse Gas Emissions Reductions — Reporting Requirements* states, "Except for purposes of reporting, emissions of carbon dioxide from industrial combustion of biomass in the form of fuel wood, wood waste, wood by-products, and wood residuals shall not be considered a greenhouse gas as long as the region's silvicultural sequestration capacity is maintained or increased." See 80 FR 23721, at page 23722. As a result, consistent with our prior approval, the EPA is proposing to retain a FIP to issue partial PSD permits to ensure that major sources in Washington have a means to satisfy the CAA construction permit requirements for GHGs when CO₂ emissions from the industrial combustion of biomass in Washington are not being considered or regulated by EFSEC under its PSD rules.

If finalized, the EPA is proposing to revise the PSD FIP at 40 CFR 52.2497 and the visibility protection FIP at 40 CFR 52.2498 to reflect the approval of EFSEC's PSD and visibility permitting programs. Specifically, the EPA is proposing to delete paragraph (a)(1) of 40 CFR 52.2497 and paragraph (a)(1) of 40 CFR 52.2498, both of which address facilities subject to the jurisdiction of EFSEC in these FIPs.

F. The EPA's Oversight Role

In approving state NSR rules into SIPs, the EPA has a responsibility to ensure that all states properly implement their SIP-approved preconstruction permitting programs. The EPA's

proposed approval of EFSEC’s PSD rules does not divest the EPA of the responsibility to continue appropriate oversight to ensure that permits issued by EFSEC are consistent with the requirements of the CAA, Federal regulations, and the SIP. The EPA’s authority to oversee permit program implementation is set forth in sections 113, 167, and 505(b) of the CAA. For example, section 167 provides that the EPA shall issue administrative orders, initiate civil actions, or take whatever other action may be necessary to prevent the construction or modification of a major stationary source that does not “conform to the requirements of” the PSD program. Similarly, section 113(a)(5) of the CAA provides for administrative orders and civil actions whenever the EPA finds that a state “is not acting in compliance with” any requirement or prohibition of the CAA regarding the construction of new sources or modification of existing sources. Likewise, section 113(a)(1) provides for a range of enforcement remedies whenever the EPA finds that a person is in violation of an applicable implementation plan.

In making judgments as to what constitutes compliance with the CAA and regulations issued thereunder, the EPA looks to (among other sources) its prior interpretations regarding those statutory and regulatory requirements and policies for implementing them. It follows that state actions implementing the Federal CAA that do not conform to the CAA may lead to potential oversight action by the EPA.

V. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to revise our incorporation by reference of 40 CFR 52.2470(c) – *Table 3 – Additional Regulations Approved for the Energy Facilities Site Evaluation Council (EFSEC) Jurisdiction* to reflect the regulations shown in the tables in section IV.A. *Regulations to Approve and*

Incorporate by Reference into the SIP and the rules proposed for removal from the SIP in section IV.C. *Regulations to Remove from the SIP*. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and/or at the EPA Region 10 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR

43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not impose substantial direct costs on tribal governments or preempt tribal law. As discussed above, the SIP is not approved to apply in Indian country located in the state, except for non-trust land within the exterior boundaries of the Puyallup Indian Reservation (also known as the 1873 Survey Area), or any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. Consistent with EPA policy, the EPA provided a consultation opportunity to the Puyallup Tribe in a letter dated July 1, 2016. The EPA did not receive a request for consultation.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 10, 2017.

Nancy J. Lindsay,
Acting Regional Administrator,
Region 10.

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